

STATE OF MICHIGAN
COURT OF APPEALS

DON SOBIESKI,

Plaintiff-Appellant,

v

TAKATA SEAT BELTS, INC. and RENEE M.
YEUTTER,

Defendants-Appellees.

UNPUBLISHED

August 8, 2006

No. 268366

Oakland Circuit Court

LC No. 05-063900-CD

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

FITZGERALD, P.J. (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's conclusion that the trial court properly dismissed plaintiff's claim of age discrimination under the Michigan Civil Rights Act, MCL 37.2202(1)(a).

"Direct evidence" of discrimination is "evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Sniecinski v Blue Cross and Blue Shield*, 469 Mich 124, 132; 666 NW2d 186 (2003). In a case where direct evidence of discrimination is present, the plaintiff bears the burden of proving to the factfinder both the discriminatory animus and its causal nexus to the challenged employment decision. *Harrison v Olde Financial Corp*, 225 Mich App 601, 612-613; 572 NW2d 679 (1988). Renee Yeutter became plaintiff's direct supervisor in February 2003. At that time, Yeutter supervised 7 project engineers. Five of the engineers were under thirty years of age and two of the engineers, plaintiff and Ron Holler, were over sixty years of age. Plaintiff presented evidence that Yeutter made comments on "a couple" of different occasions that "these [older] guys just won't work and we've got to get more young people in here." Yeutter also made comments on three occasions that "I can't work with older guys." Plaintiff also presented evidence that both he and Holler were fired while under Yeutter's supervision.¹ Viewed in a light most favorable to plaintiff, plaintiff met the initial burden of proving that age discrimination was more likely than not a substantial or motivating factor in the decision to terminate plaintiff's

¹ The other engineer's employment was terminated in June 2003 and plaintiff's employment was terminated in October 2004.

employment and created a fact question for the jury with regard to whether there is a causal connection between Yeutter's age-related statements and the termination of plaintiff's employment. I would therefore reverse the order granting summary disposition of Count I of plaintiff's complaint.

/s/ E. Thomas Fitzgerald